

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 23. BOARD OF PHARMACY

[R06-298]

#### PREAMBLE

**1. Sections Affected**

R4-23-110  
R4-23-407  
R4-23-408

**Rulemaking Action**

Amend  
Amend  
Amend

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-1904(A)(1)

Implementing statute: A.R.S. §§ 32-1904(B)(5) and 32-1968(E)

**3. A list of all previous notices appearing in the *Register* addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 692, March 3, 2006

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Dean Wright, Compliance Officer

Address: Board of Pharmacy  
4425 W. Olive Ave., Suite 140  
Glendale, AZ 85302

Telephone: (623) 463-2727, ext. 131

Fax: (623) 934-0583

E-mail: [rxcop@cox.net](mailto:rxcop@cox.net)

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Board recognizes the importance of creating a regulatory environment that facilitates and regulates the electronic transmission of prescriptions for both controlled and non-controlled substances in the interest of patient safety. The proposed rules address electronic transmission of prescriptions based on existing statutes in A.R.S. Title 32 (Professions and Occupations), Title 41 (State Government), and Title 44 (Trade and Commerce). The proposed rules will amend R4-23-110 (Definitions) by adding definitions for "digital signature," "electronic signature," and "security paper." The proposed rules will amend R4-23-407 (Prescription Requirements) by adding subsections for the requirements for transmission of a prescription order by fax and for the requirements for electronic transmission of a prescription order from a medical practitioner to a pharmacy. The proposed rules will amend R4-23-408 to add language detailing the requirements for pharmacy computer systems that receive electronic transmission of a prescription order. The rules will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

The Board believes that approval of these rules benefits the public and the pharmacy community by clearly establishing the standards for electronic transmission of prescriptions for both controlled and non-controlled substances.

Notices of Proposed Rulemaking

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The proposed rules will impact the Board, pharmacies, pharmacists, and the public. The proposed rules' impact on the Board will be the usual rulemaking-related costs which are minimal. The Board estimates the proposed rules will have minimal to moderate economic impact on pharmacies, and pharmacists. The proposed rules will establish a minimum standard for electronic transmission of prescriptions for both controlled and non-controlled substances in Arizona. Many pharmacies are already accepting electronic prescriptions. The proposed rules do not require the use of electronic prescriptions, but provide a minimum standard for pharmacies to follow, thus allowing a pharmacist to be reasonable assured of the validity of an electronically transmitted prescription. As more physicians begin to use electronic prescriptions, the established standard will allow pharmacies to feel comfortable in accepting those prescriptions. The majority of pharmacies use computers that are capable or can easily upgrade to be capable of accepting electronic prescriptions. Some pharmacies may incur minimal to moderate costs to upgrade computer software to become capable of receiving electronically transmitted prescriptions. These costs are optional, because the proposed rules do not require a pharmacy to accept electronic prescriptions, but simply establish the standard for electronic prescriptions. The proposed rules have no economic impact on the public.

The public, Board, pharmacies, and pharmacists benefit from rules that are clear, concise, and understandable. The proposed rules benefit the public and the pharmacy community by clearly establishing the standards for electronic transmission of prescriptions for both controlled and non-controlled substances.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Dean Wright, Compliance Officer

Address: Board of Pharmacy  
4425 W. Olive Ave., Suite 140  
Glendale, AZ 85302

Telephone: (623) 463-2727, ext. 131

Fax: (623) 934-0583

E-mail: rxcop@cox.net

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Comments may be written or presented orally. Written comments must be received by 5 p.m., Tuesday, September 25, 2006. An oral proceeding is scheduled for:

Date: September 25, 2006

Time: 10:00 a.m.

Location: 4425 W. Olive Ave., Suite 140  
Glendale, AZ 85302

A person may request information about the oral proceeding by contacting the person listed in item #9.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 23. BOARD OF PHARMACY**

**ARTICLE 1. ADMINISTRATION**

Section  
R4-23-110. Definitions

**ARTICLE 4. PROFESSIONAL PRACTICES**

Section  
R4-23-407. Prescription Requirements  
R4-23-408. Computer Records

**ARTICLE 1. ADMINISTRATION**

**R4-23-110. Definitions**

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to A.A.C. Title 4 Chapter 23:

“Active ingredient” No change  
“Alternate physician” No change  
“Approved course in pharmacy law” No change  
“Approved Provider” No change  
“Authentication of product history” No change  
“Batch” No change  
“Beyond-use date” No change  
“Biological safety cabinet” No change  
“Care-giver” No change  
“Class 100 environment” No change  
“Community pharmacy” No change  
“Component” No change  
“Compounding and dispensing counter” No change  
“Computer system” No change  
“Computer system audit” No change  
“Contact hour” No change  
“Container” No change  
“Continuing education” No change  
“Continuing education activity” No change  
“Continuing education unit” or “CEU” No change  
“CRT” No change  
“Current good compounding practices” No change  
“Current good manufacturing practice” No change  
“Cytotoxic” No change  
“Day” No change  
“DEA” No change  
“Delinquent license” No change  
“Dietary supplement” No change

“Digital signature” has the same meaning as in A.R.S. §§ 41-132 and 44-7002.

“Dispensing pharmacist” No change

“Drug sample” No change

“Drug therapy management” No change

“Drug therapy management agreement” No change

“Electronic signature” has the same meaning as in A.R.S. §§ 41-132 and 44-7002.

“Eligible patient” No change

“Extreme emergency” No change

“FDA” No change

“Immediate notice” No change

“Inactive ingredient” No change

“Internal test assessment” No change

“Limited-service correctional pharmacy” No change

“Limited-service long-term care pharmacy” No change

“Limited-service mail-order pharmacy” No change

“Limited-service nuclear pharmacy” No change

“Limited-service pharmacy permittee” No change

“Limited-service sterile pharmaceutical products pharmacy” No change

“Long-term care consultant pharmacist” No change

“Long-term care facility” or “LTCF” No change

“Lot” No change

“Lot number” or “control number” No change

“Materials approval unit” No change

“Mediated instruction” No change

“MPJE” No change

“NABP” No change

“NABPLEX” No change

“NAPLEX” No change

“Other designated personnel” No change

“Outpatient” No change

“Outpatient setting” No change

“Patient profile” No change

“Pharmaceutical patient care services” No change

“Pharmaceutical product” means a medicinal drug.

“Pharmacist-administered immunizations training program” No change

“Pharmacy counter working area” No change

“Pharmacy law continuing education” No change

“Pharmacy permittee” No change

“Prepackaged drug” No change

“Proprietor” No change

“Provider pharmacy” No change

“Radiopharmaceutical” No change

“Radiopharmaceutical quality assurance” No change

“Radiopharmaceutical services” No change

“Red C stamp” No change

“Refill” No change

“Remodel” No change

“Remote drug storage area” No change

“Resident” No change

“Responsible person” No change

“Score transfer” No change

“Security paper” means paper that is approved by the Board or its designee and that includes one or more of the following features that attempt to prevent duplication or aid the authentication of a document printed on the paper: laid lines, enhanced laid lines, thermochromic ink, artificial watermark, fluorescent ink, chemical void, persistent void, penetrating numbers, high-resolution border, high-resolution latent images, micro-printing, prismatic printing, embossed images, abrasion ink, holograms, and foil stamping.

“Sight-readable” No change

“Single-drug audit” No change

“Single-drug usage report” No change

“Sterile pharmaceutical product” No change

“Strength” No change

“Supervision” No change

“Supervisory physician” No change

“Supplying” No change

“Support personnel” No change

“Transfill” No change

“Wholesale distribution” No change

“Wholesale distributor” No change

#### ARTICLE 4. PROFESSIONAL PRACTICES

##### **R4-23-407. Prescription Requirements**

**A.** Prescription orders. A pharmacist shall ensure that:

1. A prescription order dispensed by the pharmacist includes the following information:

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

h. No change

i. No change

j. For an electronically transmitted prescription order, the medical practitioner’s digital or electronic signature;

~~j-k.~~ No change

~~k-l.~~ No change

2. No change

3. No change

**B.** No change

1. No change

2. No change

3. No change

4. No change

**C.** No change

**D.** No change

1. No change

2. No change

3. No change

4. No change

- a. No change
  - i. No change
    - (1) No change
    - (2) No change
    - (3) No change
  - ii. No change
    - (1) No change
    - (2) No change
  - iii. No change
    - (1) No change
    - (2) No change
    - (3) No change
    - (4) No change
    - (5) No change
    - (6) No change
    - (7) No change
    - (8) No change
- b. No change
  - i. No change
  - ii. No change
    - (1) No change
    - (2) No change
  - iii. No change
    - (1) No change
    - (2) No change
    - (3) No change
    - (4) No change
    - (5) No change
    - (6) No change
    - (7) No change
    - (8) No change
- 5. No change
  - a. No change
  - b. No change
- 6. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
    - i. No change
      - (1) No change
      - (2) No change
      - (3) No change
      - (4) No change
    - ii. No change
      - (1) No change
      - (2) No change
      - (3) No change
      - (4) No change
      - (5) No change
      - (6) No change
      - (7) No change
      - (8) No change
  - e. No change
    - i. No change
      - (1) No change
      - (2) No change
      - (3) No change
      - (4) No change

Notices of Proposed Rulemaking

- (5) No change
- ii. No change
- f. No change

**E. Transmission of a prescription order by fax machine.**

1. A prescription order for a Schedule III through V controlled substance, prescription-only drug, or nonprescription drug may be transmitted to a pharmacy by fax under the following conditions:
  - a. The prescription order is faxed only to the pharmacy of the patient's choice;
  - b. To be valid, a faxed prescription order shall:
    - i. Contain all the information required for a prescription order in A.R.S. §§ 32-1968 and 36-2525; and
    - ii. Only be faxed from the medical practitioner's practice location, except a nurse in a hospital, long-term care facility, or inpatient hospice may send a facsimile of a medical order or prescription order for a patient of the facility; and
  - c. The faxed prescription order shall contain the following additional information:
    - i. The date the prescription order is faxed;
    - ii. The printed name, telephone number, and fax number of the prescribing medical practitioner;
    - iii. The facility, if applicable, from which the prescription order is faxed, including telephone number and fax number; and
    - iv. The name of the person who transmits the fax, if other than the medical practitioner.
2. A prescription order for a Schedule II controlled substance may only be faxed for information purposes and may not serve as the original written prescription order authorizing dispensing, except for a faxed prescription order that complies with the requirements of A.R.S. § 36-2525 (F) and (G).
3. To be filed as a valid original prescription order, a faxed prescription order shall be received on a plain paper fax machine or the equivalent, or the receiving pharmacist shall copy the faxed prescription on paper of permanent quality to meet the seven-year record retention requirement of A.R.S. § 32-1964.
4. A medical practitioner or the medical practitioner's agent may fax refill authorizations to a pharmacy provided the faxed authorization includes the patient name, address, drug name and strength, quantity, directions for use, medical practitioner's name, telephone number, and fax number, medical practitioner's signature or medical practitioner's agent's name, and date of authorization.

**F. Electronic transmission of a prescription order from a medical practitioner to a pharmacy.**

1. Unless otherwise prohibited by law, a prescription order may be transmitted by electronic means from the medical practitioner or medical practitioner's agent directly to the dispensing pharmacy as specified in A.R.S. § 32-1968. For electronic transmission of a Schedule II-V prescription order, the transmission shall comply with any security or other requirements of federal law. All electronic transmissions shall comply with all security requirements of state and federal law related to privacy of protected health information.
2. In addition to all the information required to be included on a prescription order as specified in A.R.S. § 32-1968, an electronically transmitted prescription order shall include:
  - a. The date of transmission;
  - b. The identity of the individual who transmits the prescription order; and
  - c. If the individual transmitting the prescription is not the medical practitioner, the name of the medical practitioner's authorized agent who transmits the prescription order.
3. A pharmacy receiving an electronically transmitted prescription order shall maintain the prescription order as specified in A.R.S. § 32-1964.
4. An electronically transmitted prescription order shall be transmitted only to the pharmacy of the patient's choice.

**R4-23-408. Computer Records**

**A. Systems manual. A pharmacy permittee or pharmacist-in-charge shall:**

1. Develop, and implement, and comply with policies and procedures for the following operational aspects of a computer system:
  - a. No change
  - b. No change
  - c. Regular and routine backup file procedure and file maintenance, including offsite storage of backup files;
  - d. No change
  - e. No change
2. No change
3. No change
4. No change
5. No change

**B. No change**

1. No change

Notices of Proposed Rulemaking

2. No change
3. No change
4. No change
5. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
6. No change
- C. No change
  1. No change
  2. No change
  3. No change
  4. No change
    - a. No change
      - i. No change
      - ii. No change
      - iii. No change
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
- D. No change
- E. No change
- F. No change
  1. No change
  2. No change
- G. No change
  1. No change
  2. No change
- H. Prescription records and retention.
  1. Except as specified in ~~subsection~~ subsections (H)(2) and (H)(3), a pharmacy permittee or pharmacist-in-charge shall ensure that each original prescription is:
    - a. No change
    - b. No change
  2. In lieu of filing the actual original hard-copy prescription, a pharmacy permittee or pharmacist-in-charge may use an electronic imaging recordkeeping system, if:
    - a. No change
    - b. No change
    - c. No change
    - d. The actual original hard-copy prescription is maintained for no less than 30 days after the date dispensed;
    - ~~d-e.~~ Policies and procedures for the use of an electronic imaging recordkeeping system are developed, and implemented, reviewed, and revised in the same manner described in subsection (A) and complied with in the same manner as specified in subsection (A); and
    - ~~e-f.~~ The prescription is not for a schedule II controlled substance.
  3. If a pharmacy's computer system fields are automatically populated by an electronically transmitted prescription order, the automated record shall constitute the original prescription and a hard-copy or electronic image is not required if the computer system is capable of maintaining, printing, and providing within 72 hours of a request by the Board, the Board's compliance officers, other authorized regulatory Board agents, or authorized officers of the law all the prescription information required in A.R.S. §§ 32-1968 and 36-2525 and A.A.C. R4-23-407(A).
  4. A pharmacy permittee or pharmacist-in-charge shall develop and implement a quality assurance program to ensure the accuracy of electronically transmitted prescription order information and the completion of pharmaceutical patient care services for electronically transmitted prescription orders.



NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE  
TRANSACTION PRIVILEGE AND USE TAX SECTION

[R06-297]

**PREAMBLE**

- 1. Sections Affected**

R15-5-135 R15-5-137 R15-5-138 R15-5-2330 R15-5-2334	Rulemaking Action Amend Amend Amend Amend Amend
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- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 42-1005  
Implementing statute: A.R.S. § 42-5061; A.R.S. § 42-5155
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 3075, August 25, 2006
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Rick Swenson, Tax Analyst
Address:	Tax Policy and Research Division Arizona Department of Revenue 1600 W. Monroe, Room 810 Phoenix, AZ 85007
Telephone:	(602) 716-6452
Fax:	(602) 716-7995
E-mail:	RSwenson@azdor.gov

Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at:  
[www.azdor.gov/ResearchStats/draftdocuments.htm](http://www.azdor.gov/ResearchStats/draftdocuments.htm).
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The following rulemaking is pursuant to changes recommended in the latest five-year review report of the rules in Chapter 5 of Title 15 applicable to transaction privilege taxes imposed under the retail classification. The Department is amending these rules to conform to current rulewriting standards and to delete unnecessary language. Some of the rules inappropriately use the passive voice, use inaccurate verbiage, or are unclear. Language in these rules is also deleted because it does not clarify the applicable statutes.

Two use tax rules are also amended for the some of the same reasons. These two rules are substantially similar to the retail rules contained in this rulemaking.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

There should be little to no economic impact associated with amending these rules. The changes are intended to clarify the rules and make them more readable for taxpayers. The changes eliminate the passive voice, delete unnecessary language, or clarify existing ambiguities. For businesses and individuals subject to either use tax or transaction privilege tax under the retail classification, these changes may increase compliance and reduce error in reporting their tax liability. The increased clarity will also help businesses that provide services and need clarification understanding if

Notices of Proposed Rulemaking

and when they may be subject to transaction privilege tax. The Department may see a slight increase or decrease in revenues collected due to the increased clarity of these rules.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Rick Swenson, Tax Analyst  
Address: Tax Policy and Research Division  
Arizona Department of Revenue  
1600 W. Monroe, Room 810  
Phoenix, AZ 85007  
Telephone: (602) 716-6452  
Fax: (602) 716-7995  
E-mail: RSwenson@azdor.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No oral proceeding is scheduled. Under A.R.S. § 41-1023(C), an oral proceeding will be scheduled if a written request is submitted to the person identified in item #4 within 30 days after publication of this notice.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 15. REVENUE**

**CHAPTER 5. DEPARTMENT OF REVENUE  
TRANSACTION PRIVILEGE AND USE TAX SECTION**

**ARTICLE 1. RETAIL CLASSIFICATION**

Section

- R15-5-135. Sales of Restaurant Accessories  
R15-5-137. Warranty or Service ~~Contracts~~ Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions  
R15-5-138. Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts

**ARTICLE 23. USE TAX**

Section

- R15-5-2330. Tangible Personal Property Used in Conjunction with Warranty or Service Contracts or Provisions  
R15-5-2334. Purchases of Restaurant Accessories

**ARTICLE 1. RETAIL CLASSIFICATION**

**R15-5-135. Sales of Restaurant Accessories**

- A. Gross receipts from the sale of disposable containers, paper napkins, and other similar food accessories to persons engaged in the restaurant business, ~~which that~~ are transferred by the restaurant in the ordinary course of business to facilitate the consumption of the food, drink, or condiment provided, ~~shall be~~ are considered gross receipts from sales for resale.  
B. Gross receipts from the sale of matchbooks, advertisement fliers, and other similar tangible personal property to persons engaged in the restaurant business that are transferred by the restaurant for the convenience, operation, or benefit of the restaurant business are ~~taxable~~ subject to tax.

**R15-5-137. Warranty or Service Contracts Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions**

- A. For purposes of this rule, ~~the following definitions apply:~~ a “warranty or service provision” means a manufacturer’s or vendor’s warranty provision which automatically, and for no extra charge, applies to the tangible personal property when purchased.
1. “Covered” means included in the warranty or service provision.
  2. “Warranty or service provision” means a manufacturer’s or vendor’s warranty provision that automatically, and for no extra charge, applies to the tangible personal property when purchased.
- B. ~~Gross receipts from the sale of warranty or service contracts shall not be taxable if such contracts are sold as a distinct and separate item and the charge for the warranty or service contract is stated separately on the sales invoice.~~  
An exclusion from gross receipts is not allowed for a warranty or service provision on the sale of tangible personal property when the property cannot be sold without the acceptance of the warranty or service provision.
- C. ~~A warranty or service provision shall not be is not considered a warranty or service contract under A.R.S. § 42-1310.01(A) 42-5061(A). An exclusion from gross receipts shall not be allowed for a warranty or service provision on the sale of tangible personal property when such property cannot be sold without the acceptance of the warranty or service provision.~~
- D.** Tangible personal property sold in conjunction with the servicing of a warranty or service provision, but not covered by the provision, is a sale of tangible personal property that is subject to tax under the retail classification unless statutorily exempt.
- E.** Tangible personal property that is covered under a warranty or service provision, and used in the servicing of the provision, is not subject to use tax as the transaction privilege tax was paid when the tangible personal property was acquired.

**R15-5-138. Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts**

- A. For purposes of this rule, “covered” ~~tangible personal property is that means property which~~ is included in the charge for the warranty or service contract and the warranty or service contract holder is not additionally charged ~~for such property.~~
- B. ~~Tangible personal property sold in conjunction with the servicing of a warranty or service contract, but not covered by such a contract, is a sale of tangible personal property and, as such, shall be subject to tax under the retail classification, unless statutorily exempt.~~  
Gross receipts from the sale of warranty or service contracts are not taxable when the contracts are sold as a distinct and separate item and the charge for the warranty or service contract is stated separately on the sales invoice.
- C. ~~Tangible personal property which is covered under a warranty or service contract, and used in the servicing of such a contract, is subject to use tax unless transaction privilege tax was paid when the tangible personal property was acquired or unless otherwise statutorily exempt.~~  
Tangible personal property sold in conjunction with the servicing of a warranty or service contract, but not covered by the contract, is a sale of tangible personal property and is subject to tax under the retail classification, unless statutorily exempt.
- D.** Tangible personal property that is covered under a warranty or service contract, and used in the servicing of the contract, is subject to use tax unless transaction privilege tax was paid when the tangible personal property was acquired or unless otherwise statutorily exempt.

**ARTICLE 23. USE TAX**

**R15-5-2330. Tangible Personal Property Used in Conjunction with Warranty or Service Contracts or Provisions**

- A. For purposes of this rule, “covered” tangible personal property ~~is means that tangible personal property which that~~ is included in the charge for the warranty or service contract and the warranty or service contract holder is not additionally charged ~~for such the property.~~
- B. A warrantor or service person ~~shall be is liable for~~ subject to use tax on the cost of covered tangible personal property ~~which that~~ is purchased for resale but ~~which that~~ is subsequently taken out of inventory and is used in performing work under a warranty or service contract.
- C. ~~Tangible personal property used in performing work under a warranty or service provision, as delineated in R15-5-137(B) shall not be subject to the tax.~~  
Tangible personal property that is covered under a warranty or service contract, and used in the servicing of the contract, is subject to use tax unless transaction privilege tax was paid when the tangible personal property was acquired or unless otherwise statutorily exempt.
- D.** Tangible personal property used in performing work under a warranty or service provision, as delineated in R15-5-137(A), is not subject to the tax.

**Notices of Proposed Rulemaking**

**R15-5-2334. Purchases of Restaurant Accessories**

- A. Purchases of disposable containers, paper napkins, and other similar food accessories by persons engaged in the restaurant business that are transferred by the restaurant in the regular course of business to facilitate the consumption of the food, drink, or condiment provided ~~shall be~~ are considered purchases for resale.
- B. Purchases of matchbooks, advertisement fliers, and other similar tangible personal property by persons engaged in the restaurant business that are transferred by the restaurant for the convenience, operation, or benefit of the restaurant business are ~~taxable~~ subject to tax.